

## REMARKS

Upon entry of the foregoing Amendment, claims 13-25, 27-39, and 49-61 are pending in the application. Claims 13, 27, 49, and 55 have been amended. Claim 4 has been cancelled. No claims have been newly added. Applicant believes that this Amendment does not add new matter. In view of the foregoing Amendment and the following Remarks, allowance of all the pending claims is requested.

### EXAMINER INTERVIEW

Applicant thanks Examiner England for contacting Applicant's representative to resolve the outstanding issues needed to place this application in condition for allowance, as discussed in further detail below.

### NON-STATUTORY DOUBLE PATENTING REJECTION

The Examiner has rejected claims 13-25, 27-39, and 49-61 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-22 of U.S. Patent No. 7,600,007 ("the '007 Patent"). Office Action, pages 2-3.

Applicant notes that a Terminal Disclaimer with respect to the '007 Patent was filed on December 14, 2009 to overcome this rejection, and further that the Terminal Disclaimer was approved on December 15, 2009. Accordingly, Applicant requests that the Examiner withdraw this rejection of the claims. Furthermore, Applicant notes that the filing of a Terminal Disclaimer to obviate a rejection based on non-statutory double patenting does not constitute an admission of the propriety of the rejection. *See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991).

### ALLOWABLE SUBJECT MATTER

Applicant thanks the Examiner for indicating that the application would be in condition for allowance if a Terminal Disclaimer was filed and approved by the Paralegal Specialist. Office Action, page 3. As such, Applicant notes that the foregoing Amendment formalizes the previously agreed upon claim language that the Examiner acknowledged as reciting allowable

subject matter, and that the Terminal Disclaimer filed on December 14, 2009 was approved by the Paralegal Specialist on December 15, 2009.

Accordingly, Applicant submits that all of the outstanding issues raised by the Examiner have been addressed, and therefore the application is in condition for allowance. Notice to that effect is respectfully requested.

## CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action. As such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Date: December 16, 2009

Respectfully submitted,

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